UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1448
20 October 1995

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-fifth session

SUMMARY RECORD OF THE 1448th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 October 1995, at 3 p.m.

Chairman: Mr. BAN

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GE.95-19020 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Consideration of a draft general comment relating to article 25 of the Covenant (continued) (CCPR/C/53/CRP.1)

1. The CHAIRMAN, drawing attention to document CCPR/C/53/CRP.1, invited the members of the Committee to resume consideration of paragraph 13 of that text.

Paragraph 13 (continued)

2. Mr. BUERGENTHAL suggested that the phrase "such as" and the examples that followed should be deleted from the third sentence. Certain countries, for example, imposed residency requirements for candidatures in certain districts; the text as it stood would characterize such provisions as unreasonable or discriminatory, which was certainly not its intention. The words "such as bankrupts" should likewise be deleted from the final sentence and the words "or persons" added after the word "categories". Finally, apter wording should be found to replace "on objective grounds".

3. Ms. EVATT suggested that the question of freedom of association and the role of political parties might be deferred until a subsequent paragraph. Summarizing the views of members, she said there seemed to be general agreement that the second sentence should be amended to read: "Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective criteria". The final sentence of the paragraph could be retained, minus the phrase "such as bankrupts", or the second sentence could be amended to include both the idea of restriction and that of exclusion. The third sentence could be recast to read: "Unreasonable educational or residency requirements, or discriminatory disqualifying factors such as political affiliation or dissent, should not be imposed to exclude eligible persons from standing for elective office". If members preferred, however, the various examples could be deleted, as suggested by Mr. Buergenthal. In her view, the notion of unreasonable educational and residency requirements should be addressed, since many States used such provisions to prevent persons from standing for public office. The fourth sentence should be replaced by the third sentence from paragraph 14. Lastly, whether the final sentence was deleted or its ideas were incorporated in the second sentence, the distinction between restrictions on the right to stand for election and the incompatibility of elective offices with other positions should be more clearly delineated.

4. Mr. FRANCIS said that he shared the views of Mr. Bruni Celli concerning freedom of association; that issue might be taken up under paragraph 25.

5. Mr. MAVROMMATIS agreed with Mr. Buergenthal that the words "such as bankrupts" should be deleted from the final sentence. But caution was important and the wording should be amended to allow for exceptions to the principle that categories should not be excluded; clergy, for instance, were often excluded from holding public office.

6. Paragraph 13, as amended, was adopted.

Paragraph 14

7. Ms. EVATT invited the Committee to consider paragraph 14, which read:

"Requiring candidates for election to be members of parties specific or registered parties could limit unreasonably the right of individual citizens to stand for election. Any requirement for a minimum number of supporters should be reasonable and not act as a barrier to candidacy. Conditions relating to nomination dates, fees or deposits should not be discriminatory. Registration requirements for political parties should not be used arbitrarily as a means of excluding opposition groups. Political opinion cannot be used as a ground to deprive a citizen of the right to stand for election. However, it may not be unreasonable to exclude members of groups whose aims are to destroy the rights and freedoms recognized by the Covenant."

8. Paragraph 14 addressed the matter of a candidate's political affiliations and his support in the community. The final sentence, which related both to paragraph 27 of the draft general comment and to article 5 of the Covenant, might be amended to read: "However, it may not be unreasonable to exclude persons whose stated aims are to destroy the rights and freedoms recognized by the Covenant". The broad intent of the paragraph was to prevent the restriction of candidatures to members of particular parties and the establishment of nomination requirements that were too high to be met by ordinary citizens. Nor should requirements concerning the registration of political parties be used to exclude members of the opposition from standing for office. Finally, the paragraph reflected the axiomatic principle that an individual must not be deprived of his right to stand for election on the basis of his political views.

9. Mr. BHAGWATI suggested that, in the third sentence, the words "unreasonable or" should be added before the word "discriminatory".

10. Mr. KRETZMER suggested that the two ideas contained in the first sentence should be separated: first, membership in a political party as a requirement for standing for office, and second, unreasonable nomination requirements. The second of those two ideas was addressed in the third sentence and could therefore be dropped from the first sentence. In addition, the word "arbitrarily" served no purpose in the fourth sentence and should be deleted.

11. Importantly, the terms of the International Convention on the Elimination of All Forms of Racial Discrimination required that a country should exclude racist groups from participation in the electoral process; it was thus inappropriate to use the phrase "it may not be unreasonable" in the final sentence. Furthermore, the words "groups whose aims are to destroy the rights and freedoms recognized by the Covenant" were probably not strong enough; in his view, "groups whose aims are to undermine the democratic regime" would be preferable. He strongly objected to the introduction of the word "stated" to qualify "aims". A country must be empowered to exclude a group which concealed its true intent to destroy rights and freedoms.

12. Ms. MEDINA QUIROGA said that, if she had understood correctly, the Committee had agreed to move the third sentence of paragraph 14 to paragraph 13. That sentence was in fact incorrectly rendered in Spanish. In her view, wording such as "it may not be unreasonable" in the last sentence was unsuitable.

13. Mr. MAVROMMATIS said that the first sentence seemed especially inapt. Proportional representation was currently considered to be the best electoral system for a democratic society. How could it be practised without political parties? Although unquestionably every citizen should be entitled to stand for office whether or not he belonged to a party, in practice proportional representation called for the use of party lists. If no better formulation could be found, the first sentence might simply be deleted.

14. Mr. EL SHAFEI said it was unclear whether the intent of the first sentence was to draw a distinction between registered and unregistered parties; that confusion needed to be resolved. In his view, the fourth sentence did not belong in paragraph 14, which addressed not the exclusion of opposition groups, but restrictions on the ability of individuals to run for office. The issue of registration requirements for political parties was, however, an important one and should be elaborated on in another paragraph.

15. Mr. FRANCIS pointed out that article 25 made no reference to political parties. It should be recalled that not all constitutions mentioned political parties, even when, as in the case of Jamaica, such parties played an essential role in the political process. He therefore considered that the first sentence should be deleted. The Committee could revert to that issue in its discussion of paragraph 25.

16. Mr. KLEIN said he preferred to retain the gist of the final sentence, since it reflected the essential principle that a right must not be used to destroy the basis of that right. A more concise wording might, however, be found; he suggested the phrase "it is not unreasonable to exclude members of groups". In his view, the term "unreasonable" should be retained since it repeated the term used in the first sentence. While agreeing in substance with Mr. Kretzmer's rewording of the final sentence, he cautioned that it was perhaps unwise to introduce the complex and varying notion of democracy into the general comment.

17. Mr. BRUNI CELLI said that he was not familiar with the case of M.A. v. Italy (communication No. 117/1981) mentioned in the footnote at the close of paragraph 14. It would be useful to know how the Committee could have purported to deny rights to persons whose aim had been to eliminate rights protected by the Covenant. That seemed a serious precedent. Whether the members of one group intended to eliminate the rights of another was always a matter of substantive judgement. The Committee must not permit itself to condone such a dubious and dangerous proposition, which could, in practice, afford States the opportunity to deny fundamental freedoms.

18. The CHAIRMAN said that since the text was a general comment, and not a decision on a communication (in fact, the specific application of a general principle), he was unconvinced by Mr. Bruni Celli's objection. The concerns he had raised were nevertheless serious and important.

19. Mr. LALLAH said that while the quashing of political dissent by Governments had once been the foremost human rights issue, the world now faced a new set of circumstances in which groups undertook to destroy fundamental rights. These were admittedly matters requiring the exercise of judgement, and such determinations were within the purview of the executive branch. But since judicial recourse against an executive decision was assumed to be guaranteed, the courts would ultimately determine whether a political party was seeking to abolish rights.

20. Turning to the first sentence, he said that systems of proportional representation indeed required the existence of political parties. Furthermore, any law stipulating that only certain parties were eligible for participation must be reasonable. While the Covenant did not refer explicitly to political parties, it tacitly acknowledged their existence. In such a well-established democracy as the United Kingdom, for example, although candidates were never required to declare their membership, political parties in fact played a constitutional role in the affairs of the State. The Prime Minister was chosen from the political party that had won the election. In its consideration of the report of Senegal, the Committee had agreed that the limitation of political parties to four strands of opinion was unreasonable. While the gist of the first sentence should be retained, it might be amended to read: "Requiring candidates for election to be members of specific parties could limit unreasonably the right of individual citizens to stand for election." The general comment should refrain from making a judgement as to whether or not political parties should play a part in the electoral process.

21. Mrs. CHANET said that she was disturbed by the final sentence of paragraph 14. Should that Pandora's box be opened? Many States throughout history had been tempted to exclude members of groups. Their objective had been to destroy fundamental rights. They had gone so far as to suspend electoral processes and in consequence had often driven the members of such groups into terrorist activities. Article 25 of the Covenant did not even broach that difficult and delicate issue. Indeed the sentence referred not to parties but to members of groups. Which members of which groups would be excluded? Which authorities would be competent to determine such an exclusion? In her view, the final sentence of paragraph 14 should be deleted.

22. Mr. BUERGENTHAL agreed that the final sentence should be deleted, as it slightly distorted the sense of article 5, paragraph 1, of the Covenant, to which it implicitly referred. The fifth sentence, beginning with the words "Political opinion", should be preceded by "Without prejudice to the provisions of article 5, paragraph 1".

23. Regarding the first sentence, he agreed with the amendment proposed by Mr. Lallah and suggested that the words "Requiring candidates for election" should be replaced by "Unreasonable or discriminatory requirements for candidates".

24. Mr. FRANCIS said that his comments on political parties had been slightly misconstrued: his point had been that article 25 of the Covenant made no specific reference to political parties and related only to individuals.

The proposal made by Mr. Lallah was acceptable, however, as it could be a precursor to wording for incorporation in paragraph 25 of the draft general comment.

25. Mr. ANDO said that in his comments on paragraph 13 he had intimated that paragraph 14 should deal exclusively with the general subject of political parties. The second and third sentences of that paragraph should be transposed to paragraph 13.

26. Mr. BHAGWATI said that the first sentence of paragraph 14 dealt not merely with political parties, but with the ways in which the right of the individual to stand for election could be unreasonably restricted. One of those ways was by requiring that a candidate be a member of a political party, but that requirement meant that the system of proportional representation could not operate. He therefore agreed with Mr. Lallah's suggestion that reference should be made to "specific parties" and that the phrase "or registered parties" should be deleted. He also agreed with Mr. Buergenthal's proposal on the fifth and sixth sentences but felt the fourth sentence should be incorporated in paragraph 13.

27. Ms. MEDINA QUIROGA said her understanding of the second sentence was that it referred to independent candidates. If, in accordance with the amendments just proposed, the first sentence were to refer to "specific parties", that would tend to contradict the acknowledgement of independent candidates implicit in the second sentence. She agreed that it was necessary to uphold the system of proportional representation, but it was not just membership in parties that served that purpose. Popular backing of independent candidates had the same effect. As the political party system became more and more elitist, the candidacy of individuals who had the support of a large portion of the electorate was being encouraged in a number of countries.

28. Ms. EVATT said the first sentence was intended to uphold the right of the individual to stand for election. That right must not be allowed to be limited, as was sometimes the case, by requiring a candidate to be a member of a given party.

29. Mr. KLEIN endorsed Mr. Buergenthal's proposal to revise the fifth sentence of paragraph 14 so that it reflected more closely the tenor of article 5, paragraph 1, of the Covenant, and to delete the sixth sentence, although he did endorse the point made in that sentence.

30. Mr. BRUNI CELLI said that proportional representation operated better - but not exclusively - in the context of a party system. It could also work where there were groups of voters which, because of their size, had the right to participate in elections. In Latin America, for example, that was true for both municipal and nationwide elections. He would therefore suggest that, in the fourth sentence, the words "and for other groups" should be inserted between "for political parties" and "should not be used".

31. Ms. EVATT, summing up the discussion on paragraph 14, said the Committee agreed that the first sentence should indicate that the right of the individual to stand for election should not be unreasonably restricted by the requirement that he or she be a member of a party, or of a specific party.

The second sentence covered the affiliation of individuals with political groups and could be retained. The third sentence, it had been decided, should be inserted in the preceding paragraph.

32. The fourth sentence should be revised to read: "Registration requirements for political parties or other groups should not be used as a means of excluding individual members of opposition groups from participating in the electoral process." For the fifth sentence, there seemed to be general agreement in favour of the version proposed by Mr. Buergenthal, which she endorsed. The sixth sentence would be deleted.

33. Mr. KRETZMER said he was still dubious about the interrelationship of the first and fourth sentences. The first, which stated that a citizen could not be required to be a member of a party, seemed to obviate the need for the fourth, dealing with registration requirements for political parties. The fourth sentence left open the question whether groups, as opposed to individuals, could and should be excluded from participation in the electoral process.

34. Ms. EVATT said two separate issues were being addressed: States could not require individuals to be members of political parties in order to take part in elections; and the requirements for political party registration must not be made a restrictive factor in the electoral process.

35. Mr. EL SHAFEI said he hoped that Ms. Evatt would reconsider her position on the fourth sentence and move it elsewhere in the draft, as it related more directly to registration procedures and requirements than to individual rights. What should be made clear was that States must not use the process of registering political parties as a means of excluding opposition groups from the electoral process.

36. Ms. MEDINA QUIROGA agreed that the fourth sentence should be transposed. It was important to state that groups must not be excluded from politics by means of the requirements for registration of political parties, but that was a general point that should be made elsewhere in the text. Paragraph 14 was in a section dealing with individuals; the fourth sentence would be better placed in a section on groups.

37. Ms. EVATT said that, having just reread paragraph 26, she would undertake to ensure that it included the points made in the fourth sentence of paragraph 14; that sentence could then be deleted.

38. Paragraph 14, as amended, was adopted.

Paragraph 15

39. Ms. EVATT invited the Committee to consider paragraph 15, which read:

> "The right to campaign freely for election in conditions of equality is a necessary element of the right and opportunity to be elected. That right also implies that candidates for public office and elected representatives should be protected against intimidation or coercion."

40. She explained that the paragraph dealt with the ability of candidates to conduct their campaigns freely and without intimidation. Though articles 19 and 21 of the Covenant were not specifically mentioned, the concepts they set out were relevant in the present context. The paragraph also referred to the immunity of elected representatives. The only problem she could see was that the paragraph was perhaps too short.

41. The CHAIRMAN suggested that it should be merged with paragraph 17, relating to the requirement that voters not be subjected to any kind of threats during the electoral process.

42. Mr. KLEIN considered that the paragraph should stay in its present position because it dealt with individuals as candidates and the opportunity to gain election. He would suggest the addition, at the end of the paragraph, of the words "and that they do not suffer disadvantages in their current position." That would more clearly drive home the message that candidates and representatives should be free from intimidation and pressure, including, for example, the threat of losing a job.

43. Ms. MEDINA QUIROGA said it was indeed important to state that candidates must be protected from intimidation; perhaps the paragraph could be revised to reinforce that point.

44. Mr. BUERGENTHAL suggested that the final sentence should be expanded to cover discrimination in the distribution of State funds. In some countries, only elected representatives, not members of opposition groups, were entitled to State funding.

45. Ms. EVATT endorsed Mr. Klein's suggestion, as it was a good addition. Mr. Buergenthal had just made another good point, but she thought his concern could be better accommodated in the section on treatment of political parties, which dealt with such issues as access to media time.

46. Mr. ANDO said care should be taken not to mention too many specific cases, since that would lead to an avalanche of particular instances and might make drafting more difficult. The first sentence spoke of campaigning "in conditions of equality"; that, he believed, covered the point raised by Mr. Buergenthal.

47. Ms. MEDINA QUIROGA said she supported Mr. Klein's suggestion but thought it should not refer to a candidate's "current position", a formulation that was too limited. The second sentence of paragraph 15 should perhaps end with the phrase "be protected against intimidation, coercion or adverse consequences following their candidacy or election".

48. Mr. KLEIN, referring to the earlier proposal to place the first sentence of paragraph 15 elsewhere in the text, said there was a logical link between the first and second sentences; he believed they should remain together.

49. Ms. EVATT said she had no objection to retaining the first sentence, if the Committee so desired. Reformulating Ms. Medina Quiroga's proposal, she suggested it should read "not suffer disadvantages of any kind because of their candidacy."

50. Paragraph 15, as amended, was adopted.

Paragraph 16

51. Ms. EVATT invited the Committee to consider paragraph 16, which read:

"State reports should described the legal provisions which establish the conditions for holding elective public office, and any limitations and qualifications which apply to particular offices. Reports should describe conditions for nomination, e.g. age limits, and any other qualifications or restrictions. State reports should indicate whether there are restrictions which preclude persons in public-service positions (including positions in the police or armed services) from being elected to particular public offices. The grounds for removal of elected office holders should be described."

52. Except for the final sentence, which set out new ideas, the paragraph was merely a summary of points raised earlier in the text.

53. Mr. BRUNI CELLI suggested that in the final sentence, States parties should be requested to describe not only the grounds for removal of elected office holders, but also the procedures therefor. Which authorities were entitled to take action in such cases, for example?

54. Mr. BHAGWATI proposed that the final sentence should read "The grounds for removal of elected office holders should be in the law and be reasonable and based on objective criteria."

55. Ms. EVATT endorsed Mr. Bhagwati's proposal, which took care of the issue raised by Mr. Bruni Celli and interjected a substantive point. She would rephrase the final part of the proposal, however, to read: "should be provided by law and should be based on reasonable and objective criteria. States should provide information about these laws and procedures in their reports."

56. In response to a comment by Ms. MEDINA QUIROGA, Ms. EVATT said that the substantive point made in the amendment to paragraph 16 could be transposed to another section of the draft, while the request that States parties provide information would be retained.

57. Paragraph 16, as amended, was adopted.

Paragraph 17

58. Ms. EVATT invited the Committee to consider paragraph 17, which read:

"For elections to be genuine in conformity with subparagraph (b), they must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing citizens' rights and enabling them to be enforced. They should be held in respect of bodies which have full responsibility for the exercise of legislative and/or executive power and at intervals which respect the right of citizens to choose freely their representatives. Citizens must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue

influence or coercion of any kind which may distort or inhibit the free expression of the electors' will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion or manipulative interference of any kind; they should have access to unimpaired campaign advertising. However, unrestrained spending on election campaigns may unduly favour the wealthy and distort or undermine the free choice of citizens. The results of genuine elections should be respected and implemented, whether or not they favour the maintenance or transfer of power."

59. Paragraph 17 was the first of a group of four paragraphs dealing with the election process itself. It addressed itself to the circumstances surrounding elections and the main point it wished to make was that people should be able to exercise real and effective electoral options in an atmosphere of free choice. The second sentence, which referred to "bodies which have full responsibility for the exercise of legislative and/or executive power", had given rise to considerable difficulty within the Working Group because systems of government differed so widely from country to country. The point that needed making was that, where bodies having legislative or executive power existed, it was imperative that citizens should have a free choice in deciding who should exercise such power. The penultimate sentence, which dealt with the subject of campaign spending, was somewhat unclear and might be rephrased to read: "However, reasonable limitations on campaign expenditure may be justified where it is necessary to ensure that the free choice of voters is not undermined by disproportionate expenditure by any party or candidate".

60. Mr. BRUNI CELLI said that he welcomed the idea of changing the penultimate sentence but did not feel that the text just proposed reflected the need to monitor not only the amounts but also the provenance of funds spent on election campaigns. The whole question of campaign spending, encompassing aspects other than that of equality, might merit a separate paragraph.

61. Mr. LALLAH said that he had no difficulty with the second part of the second sentence but only with the expression "bodies which have full responsibility for the exercise of legislative and/or executive power". Under some constitutions, certain executive posts, such as those of ministers other than the Prime Minister or that of Director of Public Prosecutions, were not elective, and the same was true of executive bodies such as civil service commissions, especially in systems where the civil service served whatever Government was in power. It would be regrettable, in his view, if the general comment seemed to close the door on what was in fact the practice in most democracies. The difficulty could perhaps be met by referring to "legislative or governmental power at the national or local level".

62. The CHAIRMAN said that the point just made was indeed an important one, and drew attention to the first sentence of paragraph 6 of the draft general comment, already adopted by the Committee, which referred to the exercise of "real governmental power".

63. Mr. BHAGWATI, referring to the fourth sentence of paragraph 17, suggested that the word "blandishment" should be inserted between the words "compulsion" and "or manipulative interference". Tempting the voter with attractive offers was, unfortunately, a not uncommon practice.

64. Ms. MEDINA QUIROGA suggested that, even if the first sentence of paragraph 15 was maintained, a reference to conditions of equality in the election process should be included in paragraph 17.

65. Mr. EL SHAFEI remarked that the use of the word "them" towards the end of the first sentence was unclear. As to the second sentence, he saw no need for it at all. The need for elections to bodies which had responsibility - not necessarily full - for the exercise of legislative, executive and, in some countries, even judicial power was self-evident. The reference to "intervals which respect the right of citizens" was confusing; it might be preferable to speak of "frequent intervals". In conclusion, he said that he would prefer the last sentence of the paragraph to end with the word "implemented" and the remainder of the sentence to be dropped as being redundant.

66. Mr. BUERGENTHAL associated himself with the last suggestion made by the previous speaker. Referring to the fourth sentence, he remarked that the words "unimpaired campaign advertising" could lend themselves to misinterpretation. The second part of the sentence might read: "Their access to campaign advertising should not be restricted".

67. Mr. KLEIN said that he shared the concerns expressed by Mr. Lallah with regard to the second sentence. In his view, the words "in respect of bodies ... executive power and" could be simply deleted. The sentence would then read: "They should be held at intervals which respect the right of citizens to choose freely their representatives".

68. Ms. MEDINA QUIROGA suggested that the idea of elections being held at adequate intervals should be worked into the first sentence, which already spoke of elections being held on a periodic basis. The second sentence could then be dispensed with altogether.

69. Ms. EVATT, responding to the comments made, said that she had no difficulty in accepting the suggestion to insert the words "in conditions of equality" after the words "on a periodic basis" in the first sentence. Mr. El Shafei's point about the latter part of that sentence might be met by redrafting the text to read: "a framework of laws guaranteeing the effective exercise of citizens' democratic rights". She entirely agreed with Mr. Bhagwati's point concerning the fourth sentence, but suggested that the word "inducements" should be employed rather than "blandishments". Mr. Buergenthal's point about the reference to "unimpaired campaign advertising" could be met by simply dropping the second part of the sentence. Points raised by various speakers in connection with the penultimate sentence were, in her view, covered by the amended text proposed in her introductory remarks. As to Mr. Buergenthal's proposal for the deletion of the second part of the last sentence, she felt obliged to agree, albeit somewhat reluctantly.

The various points raised in connection with the second sentence could perhaps be met by redrafting it to read: "Elections must be held in respect of bodies which exercise governmental power, whether legislative or executive, and at intervals".

70. Mr. BRUNI CELLI noted with regret that his point about including a reference to the need to monitor the origins of campaign funds had been overlooked. The matter was of considerable importance to all countries. In view of the complexity of the subject, a separate paragraph would, he felt, be justified.

71. Ms. EVATT apologized for failing to respond to the suggestion, which was indeed of considerable importance. The question of financial assistance to political parties was dealt with in paragraph 26, and Mr. Bruni Celli might wish to propose an expanded version in due course.

72. Mr. EL SHAFEI said that he understood the "genuine periodic elections" referred to in article 25, subparagraph (b), of the Covenant to include elections to institutions such as trade unions or professional associations as well as to legislative and governmental bodies. The wording of the second sentence of paragraph 17 just proposed by Ms. Evatt would, in his view, unduly narrow the scope of the article.

73. Mr. LALLAH disagreed with that interpretation of article 25. In his view, the whole of that article related to public affairs and public service. The wording proposed by Ms. Evatt for the second sentence was, in his view, quite satisfactory.

74. Mr. KRETZMER agreed with Mr. Lallah that article 25, subparagraph (b) also related to public affairs. However, he was not entirely happy with the expression "whether legislative or executive", which seemed to imply that elections were equally necessary in both cases. Elections were indeed essential in the case of legislative bodies, but not necessarily for executive bodies.

75. Mr. FRANCIS said that the point made by Mr. El Shafei was a pertinent one. Democratic process must be guaranteed not only in the case of elections at the governmental level but also in elections to institutions in so far as they had an impact on government.

76. Mr. BRUNI CELLI said Mr. El Shafei's proposal raised a substantive matter which was based on political pluralism and not ideological pluralism. Society had distinct circles of government and political participation arose not only through general elections but also through specific election such as those held within trade unions and political parties. Mr. Lallah's comments had touched on article 22 of the Covenant and the right to join trade unions, but article 25 clearly addressed guaranteed participation in public elections through the right to vote. Trade unions and political parties were not private organizations representing private interests. Rather, they were constitutionally and legally recognized public institutions representing sectoral interests as provided for in article 25, subparagraph (a).

Guarantees for the holding of elections did not apply exclusively to elections to governmental posts. Modern democracy distributed power between the State and the other institutions that counterbalanced the power of the State. Opposition parties represented power in much the same way that trade unions represented social power.

77. Mr. EL SHAFEI said the executive branch was sometimes represented at elections within trade or professional unions to monitor the process and to ensure that those elections were conducted in accordance with the electoral laws of the country concerned. He believed that when the Committee discussed article 22 it would be appropriate to elaborate on the right of freedom of association and to discuss how the exercise of the right to vote could be ensured.

78. Mr. BHAGWATI commenting on the second sentence, considered that article 25, subparagraph (a), dealt first and foremost with the exercise of public power, while subparagraph (b) explained how representatives were to be freely chosen. However, every citizen could not possibly have the right to vote in trade unions. He therefore suggested that the second sentence should read: "Where bodies which exercise public power, whether legal or executive, are elected bodies, then elections should be held at intervals which respect the right of citizens to choose freely their representatives." He emphasized that the term "public power" should be used instead of "governmental power".

79. Mr. ANDO endorsed Mr. Bhagwati's comments and said the reference to "universal and equal suffrage" in subparagraph (b) undoubtedly applied to national elections.

80. Ms. EVATT said that paragraph 17 dealt with important and difficult issues. She needed time to develop her ideas on a possible solution, which she would then discuss with the members of the Committee. She suggested that the paragraph should be placed in square brackets for further discussion.

81. It was so decided.

Paragraph 18

82. Ms. EVATT invited the Committee to consider paragraph 18, which read:

> "The requirement for elections to be held by secret ballot requires States to take positive measures to maintain the privacy of the voting process, including absentee voting, where such a system exists. It implies that citizens should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful interference with the voting process. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly and impartially. There should be independent scrutiny and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Citizens should be fully informed of these guarantees."

83. Paragraph 18 addressed the need for States to adopt positive measures to maintain the privacy of the ballot box and to ensure that the voting process was free, private and without coercion or interference. The second half of the paragraph dealt with the importance of a supervisory authority, independent scrutiny, access to judicial review or other equivalent processes so that results could be challenged, and confidence in the security of the ballot. The Committee had expressed the need for disabled persons to have independent assistance. While she was not sure where that specific point could be inserted, it was an issue worthy of mention.

84. Mr. KLEIN said he was pleased with the recommended text but wished to suggest the incorporation of two additional ideas. It was necessary to state clearly that any waiver of the right to a secret ballot was inadmissible. Without enforcement of the obligation to hold a secret ballot voters would be under permanent pressure to waive that right. He suggested that a sentence on the inadmissibility of waiving the right to a secret ballot should be inserted after the second sentence. The fourth sentence should be expanded to convey the idea that votes should be counted publicly.

85. The CHAIRMAN suggested that the phrase "incompatible with article 25" should be used instead of "inadmissible" in Mr. Klein's amendment.

86. Mr. POCAR suggested that the word "positive" should be deleted from the first sentence because it was usually used in an attempt to ensure effective equality in the face of discrimination. It was inappropriate in the context of paragraph 18.

87. Mr. LALLAH, referring to Mr. Klein's comment on the fourth sentence, said he was not sure whether the counting of votes should be open to the general public, as public access could prove disruptive. He did agree, however, that the counting of ballots should be carried out in the presence of all the persons involved in the elections, including the candidates and their agents.

88. Mr. BRUNI CELLI said he was not sure whether the reference to an "independent electoral authority" in the third sentence was appropriate in that paragraph. The establishment of such an authority was intended not to deal exclusively with the protection of the secrecy of the ballot, but for the entire electoral process. A separate paragraph should perhaps be drafted to address the need for an independent electoral authority.

89. Mr. POCAR suggested that the words "or arbitrary" should be inserted between "unlawful" and "interference" in the second sentence. When the Committee had drafted the general comment on article 17 it had decided to use the two words "arbitrary" and "unlawful".

90. Mr. FRANCIS said he agreed with Mr. Bruni Celli's comments on the independent electoral authority and its role, not only in the preparatory phase of the elections leading up to the actual voting, but also as a precondition for true democracy. He suggested that a separate sentence on the security of ballot boxes should be inserted to cover cases in which ballot boxes were wrongfully removed and stuffed.

91. Ms. EVATT, summarizing the changes and additions to the paragraph, said the reference to an independent electoral authority could be placed at the beginning of the paragraph, since it related to a general provision covering the entire electoral process; it might be necessary to make a further reference to that authority later in the text. The word "positive" should be removed from the first sentence. The word "citizens" would, as far as possible, be replaced by other terms such as "voters", "electors" or "candidates" as appropriate. In the second sentence, the words "unlawful or arbitrary" would precede the word "interference". A sentence would be drafted stating that the waiver of the right to a secret ballot was incompatible with the Covenant. Further amendments would be made to include the suggestions relating to the counting of votes in the presence of candidates and the security of ballot boxes.

92. Paragraph 18, as amended, was adopted.

The meeting rose at 5.55 p.m.